

## **PUBLIC DISCLOSURE**

**January 25, 2010**

### **COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION**

**Merrick Bank  
Certificate Number 34519**

**10705 South Jordan Gateway, Suite 200  
South Jordan, Utah 84095**

**Federal Deposit Insurance Corporation  
25 Jessie Street at Ecker Square, Suite 2300  
San Francisco, California 94105**

**NOTE:** This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

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## GENERAL INFORMATION

*The Community Reinvestment Act (CRA) requires each federal financial supervisory agency to use its authority when examining financial institutions subject to its supervision, to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound operation of the institution. Upon conclusion of such examination, the agency must prepare a written evaluation of the institution's record of meeting the credit needs of its community.*

*This document is an evaluation of the CRA performance of **Merrick Bank (MB)** prepared by the **Federal Deposit Insurance Corporation (FDIC)**, the institution's supervisory agency, as of **January 25, 2010**. The agency evaluates performance in assessment area(s), as they are delineated by the institution, rather than individual branches. This assessment area evaluation may include the visits to some, but not necessarily all of the institution's branches. The agency rates the CRA performance of an institution consistent with the provisions set forth in Appendix A to 12 CFR Part 345.*

*This institution elected to be evaluated under the strategic plan option (Plan). The Plan approved by the agency, sets forth goals for satisfactory (and outstanding, if applicable) performance.*

## INSTITUTION RATING

***INSTITUTION'S CRA RATING:* This institution is rated Satisfactory.**

MB's CRA performance depicts a satisfactory record of helping to meet the credit needs of its assessment area, as outlined by the Plan, in a manner consistent with its resources and capabilities. The following supports this rating:

- Cumulative community development (CD) loans and investments met bank established minimum goals for "Satisfactory" performance for Plan years 2007 and 2008. In Plan year 2009, MB substantially exceeded the minimum goal for "Outstanding" performance.
- CD grants and donations met bank established minimum goals for "Satisfactory" performance in 2009. However, the goals did not meet the minimum established for "Satisfactory" performance in 2007 and 2008. Donations made in all three Plan years met the CRA CD objectives set forth in MB's Plan.
- CD service hours exceeded bank established minimum goals for "Outstanding" performance for all three Plan years.
- MB has not received any complaints relating to its CRA performance.

In addition, no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified.

## **SCOPE OF EXAMINATION**

This evaluation utilizes the interagency examination procedures for banks evaluated under strategic plans. To assess MB's performance with respect to these procedures, the following five lending performance criteria are analyzed: MB's CD loans and investments; MB's CD donations and grants; MB's CD services; the level of innovativeness represented by CD activities; and MB's response to any consumer complaints regarding its CRA performance.

This evaluation relies upon records and reports provided by MB, publicly available financial information, demographic data, and information gathered as part of the evaluation process, including recent community contacts. The evaluation reflects MB's CRA performance since the previous evaluation, conducted by the FDIC, as of September 10, 2007. The evaluation was conducted from MB's only office in South Jordan, Utah.

## DESCRIPTION OF INSTITUTION

MB is a Utah chartered industrial bank with one office in southern Salt Lake County, Utah. MB is a wholly-owned subsidiary of CardWorks, Inc., a Delaware Limited Partnership located in Plainview, New York. MB's sole office lies in Salt Lake County, which is within the Salt Lake City, Utah Metropolitan Statistical Area (MSA) #41620. As of September 30, 2009, assets totaled \$1.15 billion, which is a decrease of 7 percent since the previous CRA evaluation in 2007, when assets totaled \$1.23 billion. MB does not solicit walk-in business, maintain branch offices or deposit-taking automatic teller machines (ATMs), or offer a wide range of loan or deposit products, as do more typical retail banks. Credit products are marketed primarily through direct mail campaigns, and deposits are predominately acquired through brokers at 74 percent of total deposits. MB's remaining proprietary deposit products consist of merchant deposits and certificates of deposits. As of September 30, 2009, MB had total loans of \$1.15 billion, and total deposits of \$930 million.

MB's main proprietary loan products are subprime unsecured, and to a much lesser degree secured, Visa and MasterCard credit cards and recreational installment loan lending offered on a nationwide basis. As of September 30, 2009, these loans totaled \$1.03 billion. Since the previous Compliance Examination, MB has acquired two subprime credit card portfolios.

MB received an "Outstanding" rating at its prior CRA evaluation dated September 10, 2007. There are no apparent legal or financial impediments, which would prohibit MB from meeting the credit needs of the community.

## ASSESSMENT AREA

### Salt Lake County, Utah Demographic Information

MB has defined its assessment area as Salt Lake County, which contains the largest population concentration in Utah. The state capital and county seat, Salt Lake City, is the largest city in the county followed by 15 cities and 6 townships including West Valley, Sandy, West Jordan, Taylorsville, Murray, Cottonwood Heights, and South Jordan. As of 2009, Salt Lake County had over 1.1 million residents. Table 1 shows key demographic information for Salt Lake County.

Table 1 Salt Lake County Demographics					
Demographic Characteristics	#	Low % of #	Moderate % of #	Middle % of #	Upper % of #
Geographies (Census Tracts)	193	3	22	47	28
Population by Geography	898,387	1	23	49	27
Owner-Occupied Housing by Geography	203,690	0	17	52	31
Business by Geography	109,522	8	22	41	29
Farms by Geography	1,591	4	18	44	34
Family Distribution by Income Level	215,864	17	20	25	38
Distribution of LMI Families throughout assessment area Geographies	79,691	3	22	47	28
Median Family Income (MFI)		54,586	Median Housing Value		165,698
Housing and Urban Development (HUD) Adjusted MFI for 2009		67,800	3 <sup>rd</sup> Quarter 2009		6%
Households Below Poverty Level		8%	Unemployment Rate		

Source: 2000 U.S. Census, 2009 HUD updated 2009 D&B Business Data, and Haver Analytics

### Economy

According to Moody's Economy December 2009, the recession is moderating in Salt Lake City. Job losses continue, but have slowed compared to the beginning of 2009. Financial services are expected to experience a steady expansion in the long-term due to low business costs and an educated workforce. The short-term will continue to experience job losses due to consolidations. Unlike the rest of the country, a major driver of job growth during recovery and expansion will be manufacturing. Existing manufacturing industries have held up well primarily because they are focused on high-tech and medical equipment. Unemployment is not expected to reach its peak until third quarter 2010, but will remain far below the national average. Construction, professional/business services, and manufacturing will lead economic improvement in Salt Lake City.

## **Competitive Environment**

According to the June 30, 2009, FDIC Summary of Deposits, there was a total of 54 FDIC-insured financial institutions with offices or branches located in Salt Lake County. MB ranks 19<sup>th</sup> in deposit market share, holding 0.4 percent of the county's \$282 billion in total deposits. The institutions with the greatest market share of deposits are Merrill Lynch Bank with 24 percent, Morgan Stanley with 23 percent, and UBS Bank with 12 percent.

As of June 30, 2009, the State of Utah Department of Financial Institutions lists total Utah depository institutions at 166 with \$396 billion in total assets. Of that total, 35 were commercial banks with combined assets of \$158 billion, 101 were credit unions with \$15 billion in combined assets, 24 were industrial banks with \$174 billion in combined assets, and 6 were savings and loan associations with \$49 billion in combined assets.

## **Credit Needs**

In conjunction with this examination, information from existing community contacts was reviewed in order to determine the credit needs of the assessment area. The director of a local housing authority indicates that there is a critical need for housing for the homeless, services for senior citizens and transitional housing for people impacted by recent mortgage troubles. The organization is involved in affordable housing development and indicated that they have been pleased with local community and financial institution involvement. One example of financial institution involvement mentioned was the assistance provided through the community reinvestment corporation (CRC) that has provided much needed assistance for the development of affordable housing. There continues to be a need for additional affordable housing assistance, school programs, services for seniors and other related community services.

The director of a local business and economic development corporation explained that there is an ongoing need for affordable housing and the development of affordable housing projects in the greater Salt Lake area. The director indicated that there is also a strong focus on small business. The representative specifically mentioned a microenterprise loan fund (MLF) as a helpful organization providing funds, training, and support needed by small business owners that do not qualify for traditional financing. The need for additional funding and support for small businesses continues and will play a critical role in rebuilding the Salt Lake economy according to the contact.



## CONCLUSIONS WITH RESPECT TO CRA PERFORMANCE UNDER THE STRATEGIC PLAN

MB's CRA performance depicts a satisfactory record of helping to meet the credit needs of its assessment area, as outlined by the Plan, in a manner consistent with its resources and capabilities. The following information pertains to performance for 2007, 2008 and 2009 under each year's respective Plan measurable goals. A significant portion of MB's Plan focuses on cumulative CD loans and investments. Therefore, greater weight was assigned to performance in this category in establishing an overall rating. To a lesser degree, CD grants and donations and CD service hours are evaluated and considered in the overall rating.

### Combined Cumulative Lending and Investments

The measurable goal for lending and investments consist of combined cumulative CRA loans and investments expressed as a percentage of MB's average assets for the previous year minus any amounts attributed to merchant business. The calculation is cumulative thus not requiring a certain percentage of new loans and investments each year. The cumulative amount includes the total of MB's year-end loans and investments plus the amount of all other CRA loans and investments extended or made during the Plan year (such as loans extended and paid in the same calendar year). MB's average assets for each Plan year are calculated using the amounts from line 9 of the Schedule RC-K of MB's call reports for the year preceding the Plan year minus any amounts attributed to merchant business, as set forth in the Plan. The results of this analysis are displayed in Table 2.

Table 2 Cumulative Community Development Loans and Investments					
Plan Year	Bank Established Goals		Bank Performance		
	Satisfactory	Outstanding	Loans/Investments Total (000s)	Average Assets (000s)	Actual Performance
2007	1.05%	1.15%	\$8,980	\$841,847	1.07%
2008	1.10%	1.20%	\$11,742	\$1,042,236	1.13%
2009	1.05%	1.15%	\$32,226	\$1,107,184	2.91%

Source: MB records and MB Strategic Plan

Cumulative CD loans and investments met bank established minimum goals for "Satisfactory" performance for Plan years 2007 and 2008. In Plan year 2009, MB substantially exceeded the minimum goal for "Outstanding" performance. As indicated previously by community contacts utilized for the examination, organizations focusing on affordable housing and small business assistance are among those in greatest demand of funding. MB has sufficiently applied loan and investment funds toward organizations that meet these needs. Table 3 displays the organizations

and investment funds that received benefit of MB's loan in investment activities by Plan year.

<b>Table 3 Community Development Loans and Investments Breakdown</b>			
<b>Community Development Activity</b>	<b>Plan Year</b>		
	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Loans (000s)</b>			
A community reinvestment corporation	\$422	\$518	\$661
A microenterprise loan fund	\$33	\$31	\$29
A rural assistance organization	\$200	\$200	\$200
<b>Investments (000s)</b>			
Housing Bonds	\$2,215	\$1,460	\$1,025
Small Business Bonds	\$26	\$24	\$23
Federal National Mortgage Association (FNMA) Federal Home Loan Mortgage Corporation (FHLMC)	\$6,084	\$6,538	\$4,871
Government National Mortgage Association (GNMA)	\$0	\$2,971	\$25,417
<b>TOTAL</b>	<b>\$8,980</b>	<b>\$11,742</b>	<b>\$32,226</b>

Source: MB Records

### Community Reinvestment Corporation (CRC)

One CRC reviewed is a multibank affordable housing consortium established in 1998. According to its website, the CRC is one of several funds that provide long-term financing for multifamily housing developments for LMI individuals and families. The CRC is a membership organization with 34 member banks. The organization provides loans and equity capital for multifamily rental projects throughout the state. Since its inception, the CRC's loan pool has grown from \$40 million to \$70 million. The greatest number of projects are low-income housing tax credit investments. In addition to loans, the organization issues tax-exempt bonds and provides equity capital for projects. Most of the CRC's transactions range between \$200,000 and \$3 million, although the organization is authorized to provide up to \$7 million in financing. Transactions are available to both profit and non-profit developers.

### Microenterprise Loan Fund (MLF)

The MLF is a private, non-profit, multi-bank CD financial institution. It is designed to provide financing and management support to entrepreneurs who are unable to access traditional sources of financing, particularly those who are socially and/or economically disadvantaged (65 percent of borrowers are LMI). A Board of Trustees composed of representatives of these entities oversees operations and establishes operating policies. Many entrepreneurs do not have formal training or education, but do have the drive, creativity, and entrepreneurial spirit to initiate and manage a small enterprise. The MLF is designed to provide a secured form of financing for up to

\$25,000 for these entrepreneurs, who often are unable to secure conventional credit because of the lack of capital, collateral and/or poor credit history. The MLF is a partnership of local banks, industrial loan corporations, and private and public enterprises.

### Rural Assistance Organization

The rural assistance organization is a certified CD Financial Institution that serves 13 western states including Utah. According to its website, the rural assistance organization's major program areas are affordable housing development, environmental infrastructure development, and CD financing. In addition, the rural assistance organization offers leadership and economic development training and technical assistance. As of September 30, 2009, the rural assistance organization has closed 547 loans, which totaled more than \$271 million and leveraged more than \$1 billion for rural projects. These loans supported 27,159 individual water and wastewater connections for rural citizens, 11,049 housing units, and 823,063 square feet of community facility space. The rural assistance organization helps rural communities access grants and loans, and provides on-site technical assistance and customized trainings, including interactive online classes.

### **Community Development Grants and Donations**

CD grants and donations are the actual dollar amounts of grants and donations made during the Plan year expressed as a percentage of MB's average assets for the previous year minus any amounts attributed to merchant business, as defined previously. In 2009, MB met the minimum bank established goals for "Satisfactory" performance. However, as illustrated in Table 4, MB did not meet the minimum goals for "Satisfactory" performance in 2007 and 2008.

<b>Table 4 Community Development Grants and Donations</b>					
<b>Plan Year</b>	<b>Bank Established Goals</b>		<b>Bank Performance</b>		
	<b>Satisfactory</b>	<b>Outstanding</b>	<b>Grant/Donation Total (000s)</b>	<b>Average Assets (000s)</b>	<b>Actual Percentage</b>
2007	0.0113%	0.0115%	\$89	\$841,847	0.0106%
2008	0.0115%	0.0122%	\$113	\$1,042,236	0.0109%
2009	0.0113%	0.0115%	\$126	\$1,107,184	0.0114%

*Source: MB records and MB Plan*

When determining MB's overall CRA rating, less consideration was given to CD donations due to the relatively low volume of activity. The fact that the bank did not fully meet its goals for satisfactory performance for donations in 2007 and 2008 does not outweigh performance in other categories. Therefore, the bank's performance for this goal did not affect the overall satisfactory performance rating.

During the 3 year examination period, MB donated to 63 different CRA qualified organizations that provide community service, affordable housing, economic development, and revitalization to LMI populations. Among these organizations, 6 received cumulative donations of \$10,000 or more over the 3 year examination period and are described below.

Underprivileged School Sponsorship - Donations were made to sponsor a local Title 1 elementary school during all three years of the bank's Plan. The organization provides student education about workforce readiness, entrepreneurship, and financial education through experiential, hands on programs.

Legal Center- Donations were made in 2007 and 2008 to fund direct legal services to low-income families and individuals in the greater Salt Lake area.

Housing Services - Donations were made in all three years to fund the organization's efforts to increase homeownership, improve housing quality, and promote neighborhood unity and leadership in Provo, Utah.

Food Bank - Donations were provided during all three Plan years to fund continued operations of food banks throughout Utah located in low-income areas. MB also sponsored employee food drives to raise additional donation dollars and in-kind donations that were matched by MB.

MLF - Donations were provided all three years to fund efforts to provide financing and management support to entrepreneurs who are unable to access traditional sources of financing, especially those who are socially and/or economically disadvantaged.

Non-profit Housing - Donations were made in 2007 and 2009 to fund efforts to improve the quality of life for Utah residents by providing decent, safe, affordable housing focused on very low-income individuals and families.

### **Community Development Services**

CD services are expressed in the number of hours spent performing qualified CD services. Service hours are also evaluated based on the service performed and the utilization of financial expertise of the employee performing the service. These numbers account for the size of the institution as well as the relatively small size of MB's staff. Table 5 displays MB's performance goals for each Plan year. For all three years, MB exceeded the minimum goals for "Outstanding"

performance.

<b>Table 5 Community Development Service Hours</b>			
<b>Plan Year</b>	<b>Bank Established Goals</b>		<b>Bank Performance</b>
	<b>Satisfactory</b>	<b>Outstanding</b>	<b>Qualified Service Hours</b>
2007	190	210	375
2008	200	220	238
2009	200	250	283

*Source: MB records and MB Plan*

Similar weight was given to CD services as CD grants and donations. Although performance meets “Outstanding” performance measures all three years, the low volume does not outweigh performance in other categories, but does enhance the overall satisfactory rating.

A majority of MB’s service efforts focused on four organizations: a legal center, underprivileged school programs, MLF, and a substance abuse assistance center. With the exception of the underprivileged school programs, employee involvement consists of service at the Board level as well as additional assistance utilizing the employees’ financial expertise. The underprivileged school programs service involved numerous employees who participated in teaching financial education and other various curriculums at a local Title 1 elementary school.

#### **FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW**

No evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs was identified.

**APPENDIX A****SCOPE OF EXAMINATION**

SCOPE OF EXAMINATION			
TIME PERIOD REVIEWED		January 1, 2007 through December 21, 2009	
FINANCIAL INSTITUTION Merrick Bank South Jordan, Utah		PRODUCTS REVIEWED Community Development Loans, Investments, Grants and Services	
LIST OF ASSESSMENT AREAS AND TYPE OF EXAMINATION			
ASSESSMENT AREA	TYPE OF EXAMINATION	BRANCHES VISITED	OTHER INFORMATION
Salt Lake County	Full-scope On-site	Main Office	NA